to draw the proper distinction between cities and counties. One is a local organization exercising many private and some public duties; the other is a public and political subdivision of the state, exercising public duties, and generally exempt from liability except where constitutional rights would be infringed by the exemption.

THE EFFECT OF INTENT ON SURRENDERS BY OPERATION OF LAW. — When a lessee of an unexpired term takes from his landlord a new valid lease of the same premises, the English courts hold that as a rule of law the act itself amounts to a surrender of the old term irrespective of any intention of the parties.[1] Such a surrender is necessary in order that the prior term may merge in the reversion, and without that merger the landlord cannot make a valid new lease. By accepting the new lease the tenant recognizes the landlord's power to grant it, and this he is afterwards estopped to deny. In the United States, however, there is a distinct tendency to modify the rule by inquiring into the probable intent of the parties. Thus, where covenants in the original leases ensuring to the lessee the right to recover the value of his fixtures were lacking in the new leases, there was held to be no surrender, on the ground that the lessee could not be held to have intended to deprive himself of the protection of the covenants.[2] This milder American view derives support from the many English decisions in one class of cases which do regard the probable intention of the parties. For it is universally held that there is no surrender unless the new lease to the lessee is valid according to its terms.[3] Although the English courts in reaching this result seem somewhat inconsistent, any other, in forcing the lessee to give up a valid existing lease for one which he could not enjoy, would be manifestly unjust.

But where the new invalid lease is to a stranger it might be urged that the usual rule might be applied, since the injustice to the old lessee would not result, as he has no interest in the validity of the new lease. In a recent case the lessee in the new void lease was a *cestui que trust* of the original lease. It was held that the old lease to his trustee was not surrendered. *Zick* v. *London United Tramways, Ltd.*, [1908] 2 K. B. 126. Although legally the two lessees are different persons, yet in both leases the real party in interest is the same, and it obviously could not have been the *cestui's* intention to allow his trustee to surrender the old term when the new lease to himself was void. However, where the party in interest is in fact different, what authority there is tends the same way.[4] For, while the tenant may have no concern in the validity of a new lease to a stranger, the interest of the landlord is the same no matter to whom the new lease runs. He cannot intend that a new void lease should involve an actual surrender of the original lease, since that would leave him without any hold over either other party. And since the landlord must be considered equally with the tenant, his intention

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[1] Parke, B., in Lyon *v.* Reed, 13 M. & W. 285.

[2] Van Rensselaer's Heirs *v.* Penniman, 6 Wend. (N. Y.) 579; Flagg *v.* Dow, 99 Mass. 18; Thomas *v.* Zumbalem, 43 Mo. 471.

[3] Wilson *v.* Sir Thos. Sewell, 4 Burr. 1975, 1980; Davison *v.* Stanley, 4 Burr. 2210; Roe d. Earl of Berkeley *v.* Archbishop of York, 6 East 86, 104; Doe d. Biddulph *v.* Poole, 11 Q. B. 713, 720; Smith *v.* Kerr, 108 N. Y. 31.

[4] Schieffelin *v.* Carpenter, 15 Wend. (N. Y.) 400. See also Whitney *v.* Meyers, 1 Duer (N. Y.) 266.

unconditionally to surrender must likewise be present. The authority, therefore, is to be supported.

Since the courts consider the probable intention of the parties in these cases, it is difficult to see why the intention, expressed or necessarily implied, should not be examined where the new lease is valid according to the terms. In such cases the English judges say that the tenant is estopped to deny the landlord's power to make the lease, and that therefore a surrender results.[5] But they refuse to find the estoppel where the new lease, though valid, does not convey the exact interest contemplated.[6] That is, the tenant is estopped if the new lease gives him what he was intended to receive; otherwise not:[7] or, in other words, the estoppel itself is resolved into a question of intention. Consequently, the view seems preferable, that no surrender should result even where the new lease is valid, if the surrender would violate an intention clearly to be implied from the common sense of the transaction.

RECENT CASES.

AGENCY — LIABILITY OF UNDISCLOSED PRINCIPAL — PROMISSORY NOTE GIVEN BY AGENT. — The plaintiff sold realty to A and received in payment negotiable notes, signed "A, Trustee." A, unknown to the plaintiff, was acting as an agent of the defendants. The plaintiff sued upon the original contract for the purchase price. *Held*, that the plaintiff can recover. *Coaling Coal & Coke Co.* v. *Howard*, 61 S. E. 987 (Ga.).

The majority of American courts hold that recovery cannot be had on a promissory note against one whose name does not appear thereon, even if his agent signs the note and attaches words to his signature denoting his agency. *Manufacturers & Traders Bank* v. *Love*, 13 N. Y. App. Div. 561. Following the well-established rule as to the liability of an undisclosed principal, recovery is usually allowed if an action in general assumpsit is brought for the original consideration. *Harper* v. *National Bank*, 54 Oh. St. 425. The fact that the agent has given his note does not render the original contract non-existent so as to prevent a resort to it when the real parties are disclosed. The Georgia courts follow the usual presumption that the notes are not accepted as payment of the debt but merely as additional security. *Kirkland* v. *Dryfus & Rich*, 103 Ga. 127. Even where the opposite presumption prevails it is held to be overthrown in the case of an undisclosed principal, for the notes are accepted in ignorance of facts as to the real principal. *Lovell* v. *Williams*, 125 Mass. 439. The result reached in the present case, therefore, is entirely sound.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN CONTRACT — WIFE'S AUTHORITY TO PLEDGE HUSBAND'S CREDIT. — The defendant allowed his wife money sufficient for household expenses, but did not expressly forbid her to pledge his credit. The plaintiff, knowing nothing of the allowance, sold meat to the wife on her husband's credit. *Held*, that the defendant is not liable. *Slater* v. *Parker*, 24 T. L. R. 621 (Eng., K. B. D., May 11, 1908)

If the husband makes adequate provision for his wife, there is no so-called agency by necessity. *Compton* v. *Bates*, 10 Ill. App. 82. But by giving the wife an allowance for the purchase of necessaries, he constitutes her his agent in fact for that purpose, though perhaps impliedly prohibiting the pledging of his credit. It would seem, then, that it should be left to the jury whether this express authorization carries with it an apparent authority or incidental power

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[5] Lyon *v.* Reed, *supra.*
[6] Lloyd *v.* Gregory, W. Jones, 405.
[7] *Cf.* Wms., Saunders, 5 ed., 236 c.